



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शुक्रवार, 9 नवम्बर, 2001/18 कार्तिक, 1923

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171009, 8 अक्तूबर, 2001

संख्या 3-14/2000-ई० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि० प्र०-वि० सं०/4/98, दिनांक 27 सितम्बर, 2001 तदनुसार 5 अश्विन, 1923 (शक) जिसमें वर्ष 1998 की निर्वाचन मंजी संख्या 4 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 18 सितम्बर, 2001 का निर्णय निहित है, को अंग्रेजी रूपान्तर सहित, जनसाधारण की सूचना हेतु प्रकाशित किया जाता है ।

आदेश ले,

पी० सी० कपूर,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश ।

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक रोड,
नई दिल्ली-110001.

27 सितम्बर, 2001

तारीख

आश्विन 5, 1923 (शक्)

अधिसूचना

संख्या 82/हि०प्र०-वि०स०/4/98.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1998 की निर्वाचन अर्जी संख्या 4 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 18 सितम्बर, 2001 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

के० आर० प्रसाद,
सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi-110001.the 27th September, 2001
Dated—
Asvina 5, 1923 (Saka)

NOTIFICATION

No. 82/HP-LA/4/98.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Judgement dated 18th September, 2001 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 4 of 1998.

By order,
K. R. PRASAD,
Secretary,
Election Commission of India.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Election Petition No. 4 of 1998.

Judgement reserved on 17-8-2001.

Date of decision 18-9-2001.

Jagjivan Paul

Bipan Singh Parmar and others

Versus

Petitioner.

Respondents.

Coram :

The Hon'ble Mr. Justice M. R. VERMA, J.

Whether approved for reporting : Yes

For the Petitioner (s)

M/s Shrawan Dogra, Vijay Thakur and
Lovnesh Kanwar, Advocates.

For the Respondent(s)

Mr. Bhup Singh, Sr. Advocate with
Mr. Suresh Bhardwaj, Advocate.

M. R. VERMA, J.

This petition under Sections 80,81 read with Sections 100 and 101 of the Representation of People Act, 1951 (hereafter referred to as 'the Act') has been preferred by the Petitioner praying for setting aside the election of respondent No. 1 to the Himachal Pradesh Vidhan Sabha from 45, Sulah Vidhan Sabha constituency and for declaring the petitioner duly elected in place of respondent No. 1.

2. The petitioner and respondents 1 to 3 contested the election to Himachal Pradesh Vidhan Sabha from 45, Sulah Vidhan Sabha Constituency held in February, 1998. Petitioner was candidate of the Indian National Congress and respondent No. 1 was candidate of Bhartiya Janta Party. Respondents 2 and 3 were candidates of other political parties. Polling was held on 28-2-1998. The counting of votes which was held in Guitton Hall, Palampur commenced on 2-3-1998 and concluded on 3-3-1998. Respondent No. 1 was declared elected by a margin of 125 votes having secured 14690 votes whereas petitioner and respondents 2 and 3 secured 14565, 1251 and 236 votes respectively. 318 votes were rejected. The election of respondent No. 1 has been assailed by the petitioner through this petition on the basis of irregularities and illegalities allegedly committed during the course of counting of the votes and the following reliefs have been prayed for :

- (i) Inspection of all the polled votes.
- (ii) Recounting of all the polled votes.
- (iii) Setting aside the election of respondent No. 1 and declaring the same void, and
- (iv) Declaring the petitioner as elected from 45, Sulah Assembly Constituency to the Himachal Pradesh Assembly.

3. The averments regarding the irregularities and illegalities allegedly committed are contained in paras 5, 6, 8, 10, 11(i) to (xix) and 12 to 17 of the petition which read as under :

"5. That as per the programme notified by the Election Commission of India, the counting of assembly constituency in the State of H.P. was to be held on 2-3-1998 except at three segments where the polling was to be held in June, 1998. The returning officer vide his order Annexure P/1, dated 20-2-1998 ordered that the counting of the Sulah Assembly Constituency will start immediately after the completion of the counting of 44 Palampur Assembly Constituency is over. The counting of 44 Palampur Assembly Constituency was done in Guitton Hall. It is submitted that the counting of 44 Palampur Assembly Constituency started at 8.00 A.M. and the counting of the Sulah Assembly Constituency was to be held immediately after the counting of Palampur Constituency was to be over, as such it is submitted that the counting for Palampur assembly Constituency which started on 2-3-1998 at 8 A.M. was over at 10.00 P.M. and thereafter immediately, the counting of 45 Sulah Assembly Constituency started, which lasted till 11.00 A.M. on 3-3-1998. The counting programme is placed on the file as Annexure P/2. It is specifically mentioned that the staff which was employed for the counting of 44 Palampur Assembly Constituency was

the same which conducted the counting of 45 Sulah Assembly Constituency. There was no rest in between. The counting staff was tired, sleepy and non-attentive because they were continuously on duty from 8.00 A.M. of 2-3-1998 till 11.00 A.M. of 3-3-1998. It is submitted that there was no change in the election programme issued by the Election Commission of India regarding the time and date of the counting. The Returning Officer has changed the programme on his own which he cannot do under law.

6. That for the purpose of counting of the Assembly Constituency on 2-3-1998 and 3-3-1998, Shri Madan Lal Chauhan, S.D.M., Palampur was the Returning Officer with regard to Palampur, Sulah, Rajgir and Thural Legislative Assembly Constituencies and for the counting of Sulah Legislative Assembly Constituency Sh. Narain Singh, Tehsildar, Palampur was appointed as Assistant Returning Officer but he was transferred and in his place Shri S. C. Saklani, Tehsildar, Palampur was appointed as Assistant Returning Officer who conducted the counting of votes. In the room where the counting of the Parliamentary as well as of the Assembly constituencies was being conducted, 14 tables were placed for counting of votes/ballots. Out of those tables, seven were for Sulah Assembly Constituency and 7 for Kangra Lok Sabha constituency. The tables of Assembly Constituency and that of the Parliamentary Constituency were placed in a parallel position at about a distance of about 6 feet. The table of the Returning Officer was on one side of the room and he sat on a dias. It is pertinent to submit here that the Returning Officer was not present during the counting of Assembly Constituency but at the time of counting the Assistant Returning Officer, Shri S. C. Saklani was there. There was a wire-mesh/net on the tables except at tables No. 6 and 7 of the Assembly Constituency counting. There was also sitting arrangement provided for the candidates and their counting agents near the table of the Returning Officer which was at a distance of about six feet. The counting agents and the candidates were outside the wire-mesh/net and the counting staff was inside that net. It is specifically submitted that neither the candidates nor the counting agents were in a position to have a look at the ballot papers for the purpose of satisfying themselves regarding their validity and correctness and of the counting and to know as to whom the vote has been cast.

8. That the initial counting i.e. the separation of ballots of 44 Palampur Legislative Assembly Constituency and that of the Kangra Parliamentary constituency was started at 8.00 A.M. on 2-3-1998. As per the procedure adopted the ballot boxes of the Polling Stations were brought one by one and opened on all the assembly constituency tables and after separating the votes meant for the parliamentary constituency those were brought one by one to the table meant for parliament. The Assistant Returning Officer appointed the staff to act as counting supervisor, counting assistants and counting staff for the constituency of Palampur and Sulah. The final order is placed on the file as Annexure P/4, P-4/1 and P-4/2. As already submitted earlier the counting for Sulah constituency was to start immediately after the counting of Palampur Constituency was over and the same staff was to be employed for the purpose of counting. The counting staff for Palampur and Sulah Assembly Constituency was working since more than 24 hours. They were dead-tired, feeling exhausted and they were not in a position to count the votes properly.

10. That from the above facts, it is clear that the total votes polled as per diary reports of the Presiding Officers comes to 30731 and the total votes found in the ballot boxes when opened and counted comes to 30721. The account prepared by petitioner is placed on the file as Annexure P-6/A. This means that 10 votes are short. It is further submitted that the total votes counted in five rounds comes to 30711. Then again, 10 votes less than the votes found in the ballot boxes. The result is that the

total votes which were less at the time of counting were 20. This could not have happened in any circumstances unless there is irregularity in counting and this difference of votes clearly shows that the counting was not proper and has materially effected the result of the election of the respondent No. 1. These irregularities and illegalities were committed during the counting by which the result of the election in so far it concerns the returned candidate has been effected.

11. That Shri S. C. Saklani was the Assistant Returning Officer for the Constituency in question. The counting was completed in six rounds, including the one meant for postal votes. The votes of the petitioner were mixed up with the ballots of the respondent No. 1 and the votes meant for the petitioner, were illegally rejected. Further some of the votes polled, which were required to be rejected were counted in favour of respondent No. 1. The counting staff was showing a partial attitude towards the petitioner as a result of which the result of the petitioner has been affected. This attitude of the staff was as a result of the fact that the result in most of the assembly constituencies in Himachal Pradesh had been declared and the trend for the parliamentary constituencies had also started becoming available and further that the result of the constituency in question would have effected the formation of the State Government. The details of the irregularities and illegalities committed during the counting in various rounds are detailed as under :—

11. (i) That one Shri Arun Kumar, Patwari of Boda was earlier appointed as Counting Assistant at table No. 11 Lok Sabha in DDA Hall, Palampur. As is evident from Annexure P-7 at Page 3, he was brought at Table No. 1 Sulah Legislative Assembly counting.

It is submitted that the change so effected, is without any order of any authority and it was unauthorised. This assumes more significance that Shri Arun Kumar aforesaid was an active convassor and election worker of the respondent No. 1 and his village is adjacent to the village of respondent No. 1 and he convassed for him from door to door. The change in respect of Shri Arun Kumar is intentional and deliberate. It is submitted that had originally it had been mentioned that Arun Kumar is being appointed as one of the members of the counting staff, the petitioner would have lodged the protest. It is submitted that when Shri Arun Kumar was trying to put the votes cast in favour of the petitioner to the account of respondent No. 1, that was objected to by the counting agent of the petitioner but the protest was ignored. It is worthwhile to mention that Shri Biru Ram was posted in the Guitton Hall but he was taken away and asked to perform the counting duty at DDA Hall in place of Shri Arun Kumar meant for Parliament. Annexures P-8 and P-9 are placed on the file to warrant this submission.

According to original orders of Counting staff for 44 and 45 Assembly Constituencies in Guitton Hall, Shri Babu Ram Patwari was posted for mixing of ballot papers at Serial Number 2. He was replaced/relieved due to some unavoidable circumstances. In his place, Shri Manohar Lal Patwari posted at counting table No. 1 (Assembly) was engaged, whereas Shri Biru Ram GPVA o/o B.D.O. Panchrukhi already available in Reserve Staff at S. No. 1 of the same Hall could have been posted for mixing of ballot papers in the same Hall.

Instead of doing so, Shri Arun Kumar Patwari, Boda originally posted in DDA Hall at counting Table No. 11-Lok Sabha, name appearing at serial No. 2 of original list of counting staff, was first brought to Guitton Hall in Re-

serve Staff at Sl. No. 1 and Shri Biru Ram was shifted from S. No. I Guitton Hall (Reserve Staff) to DDA Hall on counting Table No. 11 Lok Sabha in place of Shri Arun Kumar Patwari.

After Shri Arun Kumar Patwari was posted from Reserve staff of Guitton Hall on Table No. 1—Assembly at Sl. No. 3 in place of Shri Manohar Lal Patwari.

All this has been done intentionally to post Shri Arun Kumar Patwari from DDA Hall counting table No. 11 Lok Sabha to Guitton Hall Counting table No. 1 at S. No. 3. The changes have been made without any proper orders. Shri Arun Kumar Patwari has put the ballot papers cast in favour of the petitioner in the bundles of respondent No. 1.

(ii) It is also submitted that Shri Arun Kumar was detailed for counting where Shri Manohar Lal Patwari was detailed on table No. 1 Sulah Assembly Constituency but in place of Shri Manohar Lal, Shri Arun Kumar aforesaid was posted and Shri Manohar Lal was detailed for mixing of ballot papers in the same Hall. There was no urgency and that too without any orders that the interested person, like, Arun Kumar could have been detailed for counting and Shri Manohar Lal detailed for counting could have been removed for him. This has enabled Shri Arun Kumar to do the mischief to the detriment of the petitioner.

(iii) At table No. 1, 80 votes, which were meant for the petitioner have been counted in favour of the respondent No. 1, 75 votes which were meant for the petitioner have been declared to be invalid. That 85 votes which were invalid have been counted for respondent No. 1.

That 30 votes, which were meant for the petitioner were rejected by the counting staff on the ground that those were having identification marks. Similarly, equal number of votes meant for the petitioner were rejected on the ground that these votes were having a slight smug of ink due to the handling of the ballot papers by the electors and an equal number of votes were rejected—those were partially stamped in favour of the petitioner. In fact those were clearly marked in favour of the petitioner.

(iv) At table No. 1, in all the rounds, the counting staff accepted 3 to 6 votes for respondent No. 1, which were required to be rejected.

That about 20 votes in favour of the petitioner were mixed in the bundles of respondent No. 1. Whenever objections were raised by the counting agents of the petitioner in this regard, the staff was requested to show the ballot papers, the same objections were not attended to and were ignored.

(v) That at table No. 2, the counting of the votes in rounds No. 3 to 5 was objected to as 15 votes which were polled in favour of the petitioner were slightly smug due to the mishandling of the ballot papers, but those were illegally rejected during counting, treating the smug as an identification mark. These were required to be counted in favour of the petitioner. Further, on this table about 12 votes in each round were mixed with the bundles of respondent No. 1, during round No. 3 to 5.

(vi) At table No. 3 about 10 votes in each round were mixed with the bundles of respondent No. 1 and other candidates and during round No. 5 there were 7 to 8 votes which could not be ascertained in whose favour these votes were polled

were liable to be rejected but were counted in favour of respondent No. 1 by the counting staff.

At table No. 4, there were number of ballot papers having the stamp on the back side of the symbol of respondent No. 1 but no stamp was on the front side where the symbols and the names were printed and the counting agent of the petitioner had made request to treat those votes as rejected votes and sent the same to the Assistant Returning Officer for decision but the counting staff was adamant and they were mixing these votes in the bundles meant for respondent No. 1 treating them as to the votes polled in favour of respondent No. 1. There are about 10 to 12 such votes in each round, which were liable to be rejected but those were counted in favour of the respondent No. 1. On table No. 4, about 8 votes of the petitioner in each round were mixed with the bundle of respondent No. 1. Further on this table 8 to 12 votes of the petitioner in each round were rejected on the ground that they were wrongly folded though marked in favour of the petitioner or that the seal mark was slightly appearing near the column of the other candidates.

- (vii) That each time, the counting agents of the petitioner objected but the counting staff used to threaten them to keep quite and they were further told that if they still persists in counting, they will be thrown out of the counting hall.

The counting staff of the department, increased the votes of respondent No. 1 by committing irregularity on this table by putting over 25 votes of the respondent No. 1 and treated them as bundle of 25 votes in his favour. In this way, the members of the counting staff had increased the votes of the respondent No. 1.

- (viii) That at table No. 5, the counting agents of the petitioner attended the counting throughout. The counting staff has wrongly accepted the votes of respondent No. 1, which were carrying double stamps and those which were having impression of the stamp between the lines of the symbols of the respondent No. 1 and another candidate and it could not be ascertained whether the votes polled in favour of respondent No. 1 and were counted in his favour. The counting staff accepted about 25 votes in rounds No. 3 and 4 and about 20 votes in the fifth round in favour of respondent No. 1 though these votes were liable to be rejected.

Further, on this table, the counting staff avoided to show the ballot papers to the counting agents of the petitioner inspite of repeated requests. The ballot papers were shown two time and on both the occasions, 4 ballots of the petitioners were in the bundles of the respondent No. 1 and the same were taken out from the bundle of respondent No. 1 which was counted at that time. The counting agent of the petitioner raised other objections but the counting staff did not listen to the requests of the counting agent of the petitioner to show him the ballot papers and told him that if he would insist to see the ballot papers, it would cause disturbance to the counting staff and he would be turned out and further counting staff stated that they were tired and wanted to finish the counting as early as possible. On this, the counting agent had no alternative but to remain a silent spectator.

- (ix) That on table No. 5, the counting agent of the petitioner raised objection that some of the votes were stamped against none of the names of the candidates or their symbols. On this table from rounds 4 and 5, the counting staff had wrongly rejected in each round about 15 votes meant for the petitioner. The votes were rejected on the ground that it had double marks. Further, the counting

staff in each round counted about 20 votes in favour of respondent No. 1. which were having identification marks either of thumb impression or signature in the column meant for respondent No. 1.

It is submitted that :

- (a) that 31 votes were shown to have been polled by those persons who were dead;
- (b) that 7 voters were in military service and they have been shown to have cast their vote;
- (c) that 139 persons were not available for polling, either they were ill or outside the constituency, in service but their votes have been shown to have been polled.
- (d) that two voters cast their votes at two places in the Sulah constituency.

In view of the above facts, 179 votes were found which were void because of the reasons given hereinabove. By this, the result of the election in favour of respondent has been materially affected and against the petitioner.

- (x) That the postal ballots, which were received and counted were not shown and it was not ascertained whether those ballot papers had been attested by the Commanding Officer/Competent Officer. As such, in total 349 postal ballots were there of which the validity could not be ascertained. Had this been done, the petitioner or his counting agents would have verified this fact.

Out of total 349 postal ballots 53 were declared invalid. It is submitted that out of those wrongly declared invalid votes, the petitioner is likely to get majority of votes which were wrongly counted in favour of respondent No. 1. Approximately, about 30 postal ballot papers were not duly signed and attested as submitted above, by the competent authority and those were liable to be rejected but in fact those have been counted in favour of respondent No. 1.

- (xi) That the validity of the doubtful votes was decided without being shown to the petitioner or his counting agent.

That the entire process of counting, including the objections raised by the petitioner were not considered or decided by the competent authority but in fact, it has been done by the Observer (Expenditure) of the Election Commission of India. It is submitted that this Observer had no authority, whatsoever to deal with the election except the factum of expenditure.

- (xii) That the petitioner had raised objection *vide* Annexure P-10, the English Translation of which is Annexure P-10A. The Assistant Returning Officer recorded his decision which is annexed as Annexure P-10/B and the Returning Officer recorded his decision *vide* Annexure P-10/C and the decision of the Observer is Annexure P-10/D.
- (xiii) It is further submitted that the objections raised by the petitioner were decided by the Observer (Expenditure). Neither the Assistant Returning Officer, nor the Returning Officer heard the petitioner nor decided the objections. In fact, the observer was the person, who decided the objections, to which he had no

authority at all and the Assistant Returning Officer and the Returning Officer had abdicated their functions. As such, the order of the Returning Officer rejecting its objections is without jurisdiction and authority and of no consequence. The decisions *vide* Annexures P-10/B to P-10/D are without application of mind, on extraneous grounds and are arbitrary.

- (xiv) That the petitioner had raised objections that there was failure of electricity twice but that was not enquired into. It is submitted that the electricity went off from the counting hall alone and not from the adjoining rooms or the verandah. There seems that the mischief was intentional. It is submitted that during the failure of the electricity the mischief was done and the votes meant for the petitioner were pilfered and put in the account of respondent No. 1. This act has materially effected the result of the election in favour of the respondent No. 1 to the detriment of the petitioner.
- (xv) That the Hall, where the counting was done is about $200^1 \times 50^1$ and only one patromax lamp was placed on the table of the Assistant Returning Officer, which was at the last end of the Hall but this was done after the electricity went off and there was sufficient time to do the mischief against the petitioner. The doubtful votes were not shown to the petitioner or his counting agents. The result is that the petitioner has been deprived of the votes which were cast in his favour and were counted in favour of respondent No. 1 which was invalid and wrong.
- (xvi) That the petitioner places on record, a Video Film of the counting as Annexure P-11.

The Video Film Cassette would show :

- (a) That the petitioner alleged in the application for recounting that there were electricity failure on two occasions as well as the counting staff working continuously from 2-3-1998 (8.00 AM) to 3-3-1998 was tired, which resulted in wrong counting of votes, for which recounting was the only remedy. The reply to this application was given by the Assistant Returning Officer and Returning Officer, after they were directed to do so by the observer (expenditure) according to his wishes. This process has clearly been shown in the Video Film.
- (b) No gas lamps were provided on the counting tables but one gas lamp was provided on the table of the Assistant Returning Officer which was not sufficient for such a big hall. This gas lamp was provided after the failure of electricity light. These facts are clearly available in the Video Film.
- (c) The doubtful votes were not shown at all to the petitioner/counting agents, while being decided by the Assistant Returning Officer. This fact is clearly available in the Video Film.
- (d) That the observer (expenditure) while entering the counting dias of Assistant Returning Officer, clearly decided for rejection of recounting application well before the submission of the application by the petitioner. As well as the observer (expenditure) in fact directed the Assistant Returning Officer and Returning Officer to write specific recommendations against the application of the petitioner. This is clearly available in the Video Film.
- (e) It was also represented to the observer (expenditure) by Shri K. S. Patial, Counting Agent of the petitioner of Table No. 1, that Shri Arun Kumar

Patwari (Counting Assistant) was found putting the ballots polled in favour of the petitioner in the ballots of respondent No. 1. This will appear in the Videofilm. This was ignored by the Observer (expenditure).

- (f) That observer (expenditure) also questioned the petitioner about the political party to which the petitioner belonged. On hearing the reply of the petitioner that he belongs to the Indian National Congress, the observer clearly remarked that whole of the Administration is in their hand being the ruling party. The attitude of the said observer was totally negative during the whole period he remained in the counting hall. These facts are clearly visible in the Video Film.
- (xvii) that at Polling Booth No. 19—Nanaon of the Sulah Constituency there was polling to the extent of 93.82%, which polling station is in the village of respondent No. 1. This was unusual feature during the election. The opening of the ballot boxes and the counting could not have been done without the prior permission of the Election Commission of India, which has not been done.
- (xviii) That the difference of votes between the petitioner and the respondent No. 1 is less than 1% and the result could not have been declared without the prior permission of the Election Commission.
- (xix) That according to the orders of the Election Commission of India, the result will not be declared in the following cases :
- (a) that the margin of votes secured by the first two leading candidates is less than 1% of the total valid votes polled by all candidates;
 - (b) that there is a request for recounting which has been rejected, and
 - (c) unusual features were found during the counting leading to suspicion of irregularities.

In such cases the Commission has directed that the result of counting will not be declared without specific prior written clearance of the Commission and if these instructions are violated then the commission has issued the instructions that :

“It is clarified that the declaration by the Returning Officer in contravention or violation of these instructions shall be deemed to be null and void *ab initio* and shall be so declared by the Commission if any contravention/violation of the above direction is brought to the notice of the Commission even after the declaration of the result.”

12. It is submitted that the petitioner represented through Annexure P-12. The petitioner sent P-12 through registered post as also through fax on the 19th March, 1998. The postal receipt of the registered letter is placed on the record as Annexures P-12/1 & P-12/2 and the Chief Electoral Officer, Shimla, through registered letter and Fax vide receipt Annexures P-12/3 and 12/4.

13. That the petitioner did not receive any reply, however, a Fax/wireless message was sent by the Election Commission to the Returning Officer, Sulah Assembly and to the Chief Electoral Officer, Himachal Pradesh which is placed on the file as Annexure P-13, in which it is stated that *ex-post facto* permission is granted to declare the election result of the said constituency. This message was received on 20-03-1998 by

the Returning Officer, Sulah constituency and the Chief Electoral Officer, Shimla. No information or copy of the order was given to the petitioner. It is further submitted that because of the non compliance of the rules and instructions issued by the Election Commission of India and by improper reception refusal and rejection of votes and reception of votes which were polled, the result of the election in so far as respondent No. 1 is concerned has been materially effected and to the disadvantage of the petitioner.

It is further submitted that by the above irregularities, the result of the election, in so far as it concerns the respondent No. 1 has been materially effected by non compliance of the Representation of People Act, the rules and the orders made thereunder as such it is requested that the election of respondent No. 1 be declared void.

14. The petitioner has got the majority of valid votes taken out of the ballot boxes from all the polling booths despite the various irregularities and illegalities committed in favour of the respondent No. 1 and against the petitioner.

15. On the above submissions as a matter of fact, the petitioner has got the highest number of votes and is entitled to be declared elected to 45—Sulah Legislative Assembly Constituency. It is only due to wrong counting, the excess of votes the respondent No. 1 was declared elected. The irregularities mentioned above have materially effected the result of the election so far as the election of respondent No. 1 is concerned.

16. That the petitioner was not allowed to note down the serial number of the ballot papers despite demands. Further, the counting agents were outside the wire mesh/net and the members of the counting staff were hurriedly counting the votes. They (counting agents of the petitioner) could not/were not allowed to note down the serial number of the ballot papers.

17. That the Returning Officer was required to test check all the bundles of the valid papers polled in favour of the candidates. No bundle was checked and no sample inspection was conducted by the Returning Officer as provided in the mandatory instructions issued by the Election Commission of India. Had he made the simple checking he would have detected all the irregularities committed on the counting tables. As such declaring the respondent No. 1 to be duly elected *vide* Annexure P-14 on the basis of the return report of the Election *vide* Annexure P-15 is absolutely illegal and requires to be set aside.”)

4. Respondent No. 1 contested the petition. In his written statement, he raised the preliminary objections (i) that the copy of petition supplied to him is not true copy (ii) that Arun Kumar against whom specific allegations have been made in the petition has not been joined as a party, therefore, petition is liable to be dismissed (iii) that the petition has not been properly verified (iv) that the allegations made in the petition are vague and lack material particulars (v) that there is no compliance of the provisions of Section 81, 82 and 117 of the Act, (vi) that the petition does not disclose any cause of action, (vii) that the petition does not disclose any ground for recounting nor any specific objection regarding counting was raised by the petitioner at the material time and his application for recounting was rejected by the Assistant Returning Officer by a speaking order and the counting agents of the petitioner were fully satisfied of the counting, (viii) that recounting and inspection, if allowed, will be violative of Section 90 of the Act and (ix) that the petition is barred by limitation. On merits, all the allegations and averments as made in the petition regarding irregularities and illegalities, have been specifically denied. Para wise reply to those paras of the petition which contain allegations of irregularity and illegalities in the process of counting of the votes read as follows :

5. That the contents of para 5 of the Election Petition as far as the programme of Election Commission of India regarding counting of votes are concerned are not denied being matter of record. It is also not denied that the counting of votes of 45—Sulah Assembly Constituency was started after the completion of the counting of 44—Palampur Assembly Constituency in Guitton Hall. Rest of the contents of this para are wrong and hence denied. After the completion of the counting of 44—Palampur Assembly Constituency and declaration of the result of the said constituency the replying respondent and his counting Agents entered in the Guitton Hall and at the time counting Staff was taking their meals in the Hall. The counting of 45—Sulah Assembly Constituency started at about 10.30 p.m. whereas the counting of 44—Palampur Constituency had completed about 8.30 p.m. It is emphatically denied that the counting staff was tired, sleepy or non attentive as alleged. In fact the Counting Staff was alert and attentive and no member of the Staff raised any objection during the counting regarding his tiredness etc. Moreover, the petitioner or his counting Agents who were present in the Counting Hall did not raise any objection at that time and the ground taken in this para is an after thought and baseless. The Returning Officer fully complied with the instructions of the Election Commission of India and did not change any programme issued by the Election Commission of India. It is pertinent to mention here that the Election programme as well as the programme for counting was widely circulated and was known to every one including the petitioner well in advance and the petitioner did not raise any objection at any time or complained to the Election Commission of India or any other authority.
6. The contents of para 6 of the Petition as far as the dates of counting and appointment of Returning Officer and Assistant Returning Officer are concerned require no reply being matter of record. It is admitted that 14 tables were placed for counting of votes in the Hall out of which 7 tables were for Sulah Assembly Constituency and 7 for Kangra Lok Sabha Constituency. It is emphatically denied that these tables were placed at a distance of 6 feet as alleged. The Guitton Hall, where the counting for Sulah Constituency took place is a very big and spacious Hall and the distance between the tables for Sulah Assembly Constituency and Kangra Parliamentary Constituency was more than 12 feet. The Returning Officer had made the arrangement for the counting of votes as per the Rules and Instructions of the Election Commission of India. The contesting candidates or their election agents or counting agents were sitting on the dias with the Assistant Returning Officer to watch and supervise the counting process. The counting Agents of every contesting candidate were sitting around each counting table at the place meant for them. It is specifically denied that the candidates or their counting Agents were not in a position to have a look at the ballot papers. It is submitted that after counting of ballot papers on each table in each round the counting Agents gave no objection certificate after satisfying themselves regarding the validity and correctness of the counting.
8. That the contents of para 8 so far as the procedure regarding initial counting and the separation of ballot of 44—Palampur Assembly Constituency and that of Kangra Parliamentary Constituency are denied for want of knowledge. The petitioner in this para has made averments regarding Palampur Assembly Constituency which are irrelevant so far as the counting of ballots of 45—Sulah Assembly Constituency is concerned. The averments regarding appointment of staff being matter of record requires no reply. However, it is emphatically denied that the counting of 45—Sulah Assembly Constituency started immediately after the counting of 44—Palampur Assembly Constituency. As submitted earlier after the completion of counting of 44—Palampur Assembly Constituency the counting staff took their meals and counting of 45—Sulah Assembly Constituency started after about two hours. It is emphatically

denied that the counting staff was tired or feeling exhausted and was not in a position to count the votes properly as alleged. It is submitted that the Counting Staff was alert and did not feel any tiredness during the counting and the entire counting process was completed in a calm and normal atmosphere without any interruption from any side. It is further submitted that the petitioner or his election agents or any other counting agents never raised any objection whatsoever regarding counting during the entire process.

10. Contents of para 10 of the petition are denied. The petitioner has not annexed copies of the diary/reports of the Presiding Officer. The copy of Annexure P-6/A with an account is prepared by the petitioner himself. No certified copies of the aforementioned diaries/reports have been attached with the Petition or even mentioned in the Form-B or Form-B B. The counting took place in the presence of the petitioner and his duly appointed counting Agents and every vote was counted in their presence without any objections being raised by the petitioner or any of his counting agents. It is emphatically denied that there were less votes at the time of counting as alleged. All the votes taken out of the ballot boxes were counted and no irregularities or illegalities were committed during the counting. It is also denied that there was any difference of votes. It is also denied that counting was not proper and result of the election of Respondent No. 1 was materially effected as alleged by the Petitioner.

11. That the contents of para-11 so far as the completion of counting in six rounds including the one meant for the postal votes. So far as the details and name of the Assistant Returning Officer are concerned are not denied. It is emphatically denied that the votes of the petitioner were mixed with the ballots of respondent No. 1 and the votes meant for the petitioner were illegally rejected. As already submitted the counting took place in the presence of the petitioner and his counting agents and they did not raise any objections at the time of counting. It is also denied that some votes required to be rejected were counted in favour of respondent No. 1. Before rejection the Assistant Returning Officer used to show every vote to the candidate or his election agents who were sitting along with him. Prior to this, on every table counting supervisor used to show every doubtful vote to the counting Agent of each candidate before sending the same to the Assistant Returning Officer for decision. It is emphatically denied that the Counting Staff was showing partial attitude towards the petitioner. The story narrated in this para regarding partiality being shown by the counting staff is totally concocted one. The petition deserves to be dismissed in limine as the petitioner has failed to point out the names of the Staff Members showing partiality towards the petitioner or the respondents. It is also denied that the attitude of the Counting staff was due to the fact that the results of most of the Assembly Constituency in Himachal Pradesh have been declared and the trend for the parliamentary constituency had also started becoming available and further that the result of the constituency in question would have effected the formation of the State Government. The result of the election for HP Assembly clearly proves that Indian National Congress had secured more seats than the Bhartiya Janta Party at the time of counting of 45 -Sulah Constituency. It is further submitted that the Indian National Congress to which the petitioner belongs was Rulling Party in the State at the time of counting of votes.

11 (i) Sub para (i) is wrong and hence denied. The staff was deputed by the Returning Officer and Assistant Returning Officer as per the Rules and Instructions of the Election Commission of India and as per the requirement. The copy of the Annexure P-7 as supplied to the Replying Respondent is not properly verified as per the law.

It is denied that there was any intentional or unauthorised change in the counting Staff as alleged. It is totally wrong and denied that Shri Arun Kumar was an active convessor and election worker of respondent No. 1 and his village is adjacent to the village of replying respondent and he convessed for him from door to door. It is submitted that replying respondent is not even personally known to any such Arun Kumar, Patwari who was his worker. Moreover the petitioner has mentioned this fact in this Election Petition only and he never made any complaint to the Returning Officer or Assistant Returning Officer or Election Commission of India regarding convessing by Shri Arun Kumar who happens to be Patwari as per the Petitioner.

The deployment of the staff of counting is the duty and prerogative of the election authorities and the candidates can raise any objections if some doubtful person is admitted by the authorities. The petitioner did not raise any objection at the time of counting also. It is emphatically denied that said Shri Arun Kumar was trying to put the votes cast in favour of the petitioner to the account of Respondent No. 1. It was not even practical as counting agents of all the candidates were sitting around each table and each counting table was being supervised by the counting supervisor a Gazetted Officer and also the Assistant Returning Officer and the candidates were also present in the Hall during the counting. No objection as is alleged was ever raised by any of the Counting Agent of the petitioner. The petitioner has also failed to mention the name of the agent who raised any such objection. The counting staff was deputed by the authorities concerned as per their requirement and no body was changed intentionally or deliberately. The copies of Annexure P-8 and P-9 as supplied to the Replying Respondent have not been properly verified as per the law.

The contents of this sub para regarding replacing of Shri Babu Ram, Patwari due to some unavoidable circumstances is self explanatory that authorities had to depute the staff as per their requirement and the same has to be changed for unavoidable circumstances. Rest of the contents of this para are irrelevant hence denied.

The contents of this para as far as the deployment of the staff for counting is concerned is denied for want of knowledge. It is submitted that the replying respondent does not know most of the members of the counting staff personally. It is denied that Shri Arun Kumar, Patwari was deputed intentionally. Change if any, in deputation of the Counting Staff were effected by the authorities due to administrative exigency. The staff was deputed by the Returning Officer who was himself present at Palampur on 2-3-98 and 3-3-98 when the counting took place. He visited DDA Hall Guitton Hall frequently during the counting process and the petitioner failed to raise any objection regarding the staff even at the time of counting. It is further submitted that the petitioner filed an application Annexure P-10 for recounting. In this Annexure P-10 also the petitioner has not mentioned anything about the counting staff or any irregularities committed by any member of the Counting Staff. The story concocted by the petitioner in the Election Petition regarding counting or deployment of Staff and some irregularities committed by any particular member of the counting staff is an after thought hence the petition deserves to be dismissed.

(ii) The contents of sub para (ii) are totally wrong and hence denied. No mischief as alleged has been committed by any member of the counting staff and

the staff for counting was proper and authorisedly deputed by the Returning Officer and Assistant Returning Officer who were well within their powers to do so.

- (iii) Contents of sub para (iii) are totally wrong hence emphatically denied. The petitioner has not given as to how many votes in a particular round were counted in favour of Respondent No. 1. He has not given the break up of the votes. In fact the contents of sub para (iii) of the petition are self contradictory and the figures mentioned by the petition are imaginary. At one place the petition is stating that 75 votes which were meant for the petitioner have been declared to be invalid and on the other place he has given the figure of 30 votes which were rejected on the ground of having identification mark, equal number of votes rejected on the ground having a slight smung of ink and equal number of votes rejected on the ground of partially stamped in favour of the petitioner which total comes to 90. As submitted earlier the counting staff used to show every doubtful vote to the counting agents and then submitting the same to the counting supervisor who after scrutiny of those votes used to submit the same to the Assistant Returning Officer, Incharge of the Counting. The Assistant Returning Officer used to show each and every such vote to the candidates who were sitting alongwith him on the dias and after carefully examining the same and satisfying the candidates, votes were declared invalid as per the Rules. It is again reiterated that the petitioner or his counting agents never raised any objections during the entire election process. The contents of this para are vague and the averments have been made just to concoct a story for filling the Election Petition.
- (iv) Contents of sub para are totally wrong and hence denied. No vote was accepted for respondent No. 1 which were rejected as alleged. It is also denied that 20 votes were mixed in the bundle of respondent No. 1 which were in favour of the petitioner. It is also denied that objections were raised by the counting agents of the petitioner and the same were not attended to and were ignored. The contents of this sub para are vague, wrong and the story is an after thought and concocted one.
- (v) Contents of sub para (v) are wrong and hence denied. The figure shown in this sub para is also imaginary. Votes were rejected by the Assistant Returning Officer after proper scrutiny and examination and also satisfying the petitioner and his counting agents. It is also denied that about 12 votes in each round were mixed with the bundle of Respondent No. 1 on table No. 2 as alleged. After round no objection certificate was given by the counting agents regarding their satisfaction towards counting staff.
- (vi) Contents of sub para-(vi) are wrong hence denied. No votes was mixed with the bundle of respondent No. 1 and other candidates as alleged. It is further denied that during round No. 5 there were 7 to 8 votes which could not be ascertained and were liable to be rejected but were counted in favour of respondent No. 1.

It is totally denied that there were number of ballot papers having the stamp on the back side of the symbol of respondent No. 1 but no stamp was on the front side where the name and symbol was printed. There was no such vote. Moreover no vote which ought to have been rejected was counted in favour of respondent No. 1. It is also denied that any objections were raised on this table by the counting agent or the petitioner regarding mixing up any vote in the bundle meant

for respondent No. 1. It is also denied that there were 10 to 12 such votes in each round as alleged which were liable to be rejected but those were counted in favour of respondent No. 1. It is also denied that on this table 8 to 12 votes of the petitioner in each were rejected on the ground that they were wrongly folded or that the seal mark was slightly appearing near the column of the other candidates. It is specifically submitted here that on this table counting agent of the petitioner issued no objection certificate after each round. The said certificate was issued after fully satisfying himself with the validity, genuineness and correctness of counting on this table.

- (vii) Contents of sub para (vii) are totally wrong and hence denied. The counting took place in calm and cordial atmosphere and the petitioner or his counting agents never raised any objections. It is totally denied that counting staff ever threatened the counting agents of petitioner. It is submitted that the petitioner has not mentioned the name of any member of the counting staff who threatened the counting agents of the petitioner or were told that they will be thrown out of the counting Hall. In fact this sub para is confusing and does not make any sense.

It is denied that the counting staff increased the votes of respondent No. 1 by committing irregularities by putting over 25 votes of respondent No. 1 and treating them as a bundle of 25 votes in favour of respondent No. 1. It is also denied that counting staff increased the votes of respondent No. 1.

- (viii) Contents of sub para are wrong and hence denied except that the counting agents of the petitioner throughout attended the counting at table No. 5. It is totally denied that counting staff wrongly accepted the votes of respondent No. 1 improperly. Only the valid votes were counted by the counting staff in favour of respondent No. 1 and doubtful votes were kept in a separate bundle and were handed over to the counting supervisor. After examining the doubtful votes counting supervisor used to submit the same to the Assistant Returning Officer for decision. The Assistant Returning Officer rejected only the invalid votes as per Rules after satisfying the candidates sitting along with him on the dias. It is totally denied that 25 votes in round No. 3 and 4 and about 20 votes in the 5th round were accepted in favour of respondent No. 1 wrongly as alleged.

Contents of this sub para regarding to show the ballot papers to the counting agents of the petitioner are wrong hence denied. It is denied that four ballots of the petitioner were in the bundle of respondent No. 1 as alleged. It is denied that any objection ever raised by the counting agents of the petitioner. It is further denied that counting Staff ever told counting agents of the petitioner that he will be turned out if he insist to see the ballot papers. It is totally wrong and hence denied that counting staff ever stated that they were tired. However, it is submitted that as per the Rules Counting of votes is to take place without any disturbance. The contents of this sub para are totally wrong and the story seems to have been concocted just to file the Election Petition.

- (ix) The sub para totally wrong and hence denied. No objections were ever raised by the counting agents of the petitioner as alleged. In fact he has issued no objection certificate after every round of counting. It is totally denied that 15 votes meant for the petitioner were wrongly rejected in each round. The counting was done in accordance with the law and votes were rejected as per the Rules by the Assistant Returning Officer. The counting staff had nothing to do with the rejection of the votes as they just separated the doubtful votes.

and some were handed over to the Assistant Returning Officer through the Counting Supervisor.

- (a) The contents of sub para *a, b, c, and d* of aforementioned sub para-(ix) are totally wrong hence emphatically denied. The averments that 31 votes were shown to have been polled by those persons who were dead are wrong, vague and imaginary. The petitioner has failed to give the names of the dead persons and also other material particulars and facts regarding these 31 votes.
- (b) Contents of sub para *b* regarding 7 voters in Military service and shown to have cast their votes are also wrong hence denied. The petitioner has not given the material particulars regarding these 7 votes.
- (c) Sub para *c* is wrong hence denied. It is denied that 139 persons were not available for polling but their votes have been shown to have been polled.
- (d) Sub para *c* is also wrong and hence denied. The petitioner has not given the names of these two voters or any other detail regarding them.

It is totally denied that 179 votes which were void and have been shown to have been polled and this has materially effected the result of the election in favour of respondent No. 1 and against the petitioner.

It is submitted that there is no co-relationship between the two parts of sub para (ix). The allegations levelled in this sub para are wrong and imaginary. Moreover, the petitioner has not given the material particulars and facts regarding the aforementioned 179 votes hence the petition deserves to be dismissed on this ground alone.

- (x) The contents of sub para (x) is wrong and hence denied. All the postal ballots received and counted were shown to all the candidates present during the counting and the same were counted by the Returning Officer only after satisfying the candidates. At the time of counting no objections were raised by the petitioner or any other candidates or the counting agents.

It is wrong that any postal ballots were declared invalid wrongly and it is also wrong that petitioner was likely to get majority of these votes. It is further denied that 30 postal ballots papers were not duly signed and attested by the concerned authority and those were liable to be rejected but have been counted in favour of respondent No. 1. In fact the petitioner is not himself certain as to how many postal ballots were counted and rejected. This sub para also lacks material facts and particulars as the petitioner has not given the number of such postal ballot papers or any other description.

- (xi) Contents of sub para (xi) are wrong and hence denied. As submitted earlier the validity of the doubtful votes are decided only after showing the votes to the petitioner or his counting agents.

It is wrong and denied that the objections raised by the petitioner over the process of the counting was not considered or decided by the competent authority. It is emphatically denied that the observer (Expenditure) of the Election Commission of India decided any such objections or counting process. The counting process was supervised by the Assistant Returning Officer and all objections were decided by him. The Returning Officer frequently visited the counting Hall during the process of counting. The Observer (Expenditure) also visited the counting Hall at the end of the counting only and he was authorised to do so. He did not decide any objections as alleged.

- (xii) That the contents of sub para (xii) are not denied. The petitioner filed the application Annexure P-10 after the counting was over and the same was rejected rightly by the competent authority. The orders passed by the Returning Officer and Assistant Returning Officer are speaking and well reasoned and the same have also been endorsed by the observer. The petitioner having failed to raise the objections during the counting process or in the aforementioned application Ann. P-10 and now has lost his right to raise these objections in this Election Petition. Hence the Election Petition deserves to be dismissed.
- (xiii) That the contents of sub para (xiii) are wrong and hence denied. In fact, the contents of this sub para are contrary to the averments made by the petitioner in sub para (xii) supra. It is emphatically denied that the observer (Expenditure) decided the objections raised by the petitioner. As submitted earlier the petitioner did not raise any objections during the entire election process. After the completion of the counting the petitioner filed the application Annexure P-10 which was decided by the Returning Officer. The decision was recorded by the Returning Officer as per the report of the Assistant Returning Officer. The observer (Expenditure) visited the counting Hall at the end of the counting and gave his opinion on the decision of the Returning Officer only. The Returning Officer has rightly rejected the objections as he was competent to do so. The decision *vide* Ann. P-10/B, P-10/C, P-10/D are speaking orders and well reasoned one.
- (xiv) Sub para (xiv) are wrong and hence denied. The petitioner raised the objection regarding failure of electricity after the completion of the counting process and the same was rejected by the competent authority by a well reasoned and speaking orders. It is wrong that the electricity went off from the counting Hall alone and not from the adjoining room or the verandah. It is denied that there was any intentional mischief. In fact, no objection was raised during the counting process and there was alternative lighting arrangement also. It is further submitted that at 10.30 p.m. counting has just started and was in the initial process only. It is pertinent to mention here that at 10.30 p. m. ballots boxes were not even opened. At that time counting staff was in the process of bringing the ballots boxes to the tables from the room where the same were kept under tight security. Hence there was no question of pilfering the votes meant for the petitioner. It is totally denied that the result of the election was materially effected in favour of respondent No. 1 to the detriment of the petitioner.
- (xv) That the contents of sub para (xv) are wrong and hence denied except that the counting Hall is about 200' x 50' approximately. There was sufficient lighting arrangement and alternative arrangement of light was also there. It is further denied that the doubtful votes were not shown to the petitioner or his counting agents. It is further denied that the petitioner had been deprived of the votes which were cast in favour of the petitioner and were counted in favour of respondent No. 1. This para is mere repetition. The counting was done as per the rules and no objections were raised by the petitioner during the entire counting process.
- (xvi) Contents of sub para (xvi) are not admitted. The genuineness and authenticity of the Video film cassette annexed with the petition is to be observed and hence denied and the petitioner is required to be put to strict proof.
- (a) This sub para (a) of the main sub para (xvi) is wrong and hence denied. Moreover the contents are irrelevant. The alleged Video film cassette has no evidentiary value. Moreover this is no ground for seeking the indulgence of the Hon'ble Court for ordering the recounting of votes. The orders of the Assistant Returning Officer and Returning Officer are speaking and well reasoned one and self explanatory

- (b) Contents of sub para-b are totally wrong and hence denied. There was sufficient light in the Hall and alternative arrangement of petromax was also made by the authorities concerned. There was no failure of light during the counting of ballot papers. There was just a tripping at the initial stage of the counting as already stated above. Video film has no relevancy or any evidentiary value at all.
- (c) The contents of sub para-c are wrong and hence denied. As already stated earlier the Assistant Returning Officer decided all the doubtful votes showing to the candidates and satisfying the candidates and their agents who were seated on the dias along with them.
- (d) Contents of sub para-d are wrong hence denied. Application for recounting filed by the petitioner after the counting was over was decided by the Assistant Returning Officer and Returning Officer themselves. The observer has also given his opinion on a particular point. Independent decision was taken by the different authorities on the spot as is evident from the orders annexed with the petition. The video film has no relevance or evidentiary value.
- (e) Contents of para-e are totally wrong and hence denied. It is denied that Sh. K. S. Patial counting agent of the petitioner on table No. 1 complained to the observer (Expenditure) regarding putting the ballots polled in favour of the petitioner in the ballots of Respondent No. 1 by Shri Arun Kumar, Patwari. As already submitted no objections were ever raised by the petitioner or the counting agents at any stage. In fact, after the counting of every round counting agents issued the no objection certificate after satisfying themselves with the process of counting.
- (f) Contents of sub para-f are emphatically denied. The observer (Expenditure) visited the counting hall at the end of the counting process and he did not interfere in the counting process in any manner. In the presence of the replying respondent the observer did not ask anything from the petitioner nor he made any observations. However, it is correct that petitioner belongs to the Indian National Congress which was the Ruling Party at the time of counting of votes and prior to that and the administration was in their hands.
- (xvii) The contents of sub para-(xvii) are wrong and hence denied except that Nanaon is the village of respondent No. 1 having polling booth No. 19. There was no unusual voting in the said booth. It is wrong that the ballot boxes could not have been opened and the counting started without the prior permission of Election Commission of India. The counting was done as per the Rules and the instructions of the Election Commission of India. It is further submitted that polling was held on 28-2-1998 whereas counting was started on 2-3-1998 and in between this period all the reports from polling booths had been furnished to the Returning Officer as well as to the Election Commission of India.
- (xviii) Contents of sub para-(xviii) are wrong and hence denied. Lessor difference of votes between the petitioner and respondent No. 1 is no ground for non declaration of the result. Moreover, there is no such statutory provisions for stopping the declaration of the result. All the necessary permission were obtained by the authorities concerned and the observer (Expenditure) who was directly deputed by the Election Commission of India as its representative was also present on the spot.

(xix) Contents of para-(xix) are wrong and hence denied. The replying respondent has no dispute with the instructions of the Election Commission of India. However, it is submitted that these instructions have no statutory sanction. Moreover, these alleged instructions have been quoted unnecessarily in the petition. It is further submitted that all necessary permissions were obtained and formalities observed before declaration of the result and the representative of the Election Commission of India did not find any reasons to stop the declaration of the result.

12. Contents of para-12 denied for want of knowledge. However, it is submitted that the copies of Annexure P-12, P-12/1 and P-12/2, P-12/3 and P-12/4 have not been signed and verified as per the requirement of Section 81 of the Representation of People Act.
13. Contents of para-13 of the petition are wrong and hence denied. However it is denied for want of knowledge that petitioner did not receive any reply. However, it is submitted here that petitioner has tried to confuse the facts regarding Annexure P-13. As per the copy of Annexure P-13 as annexed by the petitioner, the message was faxed on 4-3-98 i. e. immediately after the declaration of the result and the Election Commission of India had also sent a copy of the same for confirmation to the Returning Officer for 45--Sulah Assembly Constituency by post also. The petitioner as alleged in para supra represented through Annexure P-12 on 19-3-98 whereas the message from Election Commission of India vide Annexure P-13 had been faxed on 4-3-1998. That this message has nothing to do with the representation of the petitioner. It is further denied that the result of the election so far as respondent No. 1 is concerned has been materially effected to the disadvantage of the petitioner due to non compliance of the Rules and instructions issued by the Election Commission of India and by improper reception, refusal and rejection of votes and reception of votes which were polled. Entire election process in 45--Sulah Assembly Constituency was completed in accordance with the rules and instructions issued by the Election Commission of India and no vote was improperly received, refused and rejected as alleged.

It is further submitted that no irregularity was committed during the polling or the counting. It is also denied that result of the election in so far as it concerns the respondent No. 1 has materially effected by non compliance of Representation of People Act, the Rules and the orders made thereunder. The election of Respondent No. 1 as Member of the Legislative Assembly of Himachal Pradesh from 45--Sulah Constituency is perfectly legal and valid and the petition has been filed just to take political advantage and to harass the respondent. The petition lacks material particulars as well as is ground less for declaring the result of respondent No. 1 as void. Hence the same deserves to be dismissed.

14. Contents of para-14 are totally wrong and hence denied. The respondent No. 1 got the majority of valid votes taken out of the ballot boxes and was rightly declared as elected. As already submitted the entire counting process was completed in the presence of the petitioner and it is known to him that he was defeated as he got lessor votes than the replying respondent No. 1. He did not raise any objections during the counting. The grounds taken in this petition for declaring the result of respondent No. 1 are void and an after thought and baseless.
15. Contents of para-15 are wrong and hence denied. In fact this para is mere repetition. It is denied that the petitioner has got the highest number of votes and is liable to be declared as elected from 45--Sulah Constituency. It is also denied that due to wrong counting and the excess of votes the respondent No. 1 was declared elected. It is

further denied that due to irregularities mentioned in the petition have materially effected the result of the election so far as the election of respondent No. 1 is concerned. It is submitted that respondent No. 1 got the highest number of votes and was rightly declared elected from 45-Sulah Constituency the counting was done in accordance with law and no irregularity was committed either during the polling or counting.

16. That the contents of para-16 are totally wrong and emphatically denied. The counting agents of the petitioner never raised demand to note down the serial number of the ballot papers as alleged. Moreover, it is not permissible under the law also. In the democratic set up secrecy of ballot papers/votes is of paramount importance and that cannot be allowed to be infringed by any body as per Section 94 of the Representation of People Act.

17. Contents of para 17 are wrong and hence denied. The Returning Officer frequently visited the counting Hall during the process of counting and inspected the counting as per the instructions of the Election Commission of India. No irregularity was being committed on the counting table and the counting was completed in every round to the satisfaction of the counting agents and the candidates present in the counting Hall. No complaint or objection was raised by the petitioner or his counting agent during the entire process of counting. Only one application was filed after the completion of the counting which was rightly rejected by the Assistant Returning Officer as per the law and various pronouncements made by the Apex Courts, recounting cannot be ordered merely on the basis of doubts. Petitioner has not based his application Annexure P-10 on any ground but merely expressed suspicious as the respondent No. 1 has got majority of valid votes. Hence he was rightly declared to be duly elected vide Annexure P-14 on the basis of the return report Annexure P-15. The grounds taken in the petition are baseless hence the petition deserves to be dismissed."

5. The respondents 2 and 3 did not appear to contest the petition and are *ex parte*.

6. The petitioner filed rejoinder to the written statement filed by respondent No. 1 wherein the grounds of defence as raised in the statement have been denied and the averments as made in the petition have been reiterated.

7. The following preliminary issues were initially framed on 18-9-1998 :

1. Whether the petitioner has not supplied a true copy of the main election petition as required under Section 81(3) of the Representation of the People Act, 1951, as amended upto date ? OPR.
2. Whether the main election petition is bad for non joinder of necessary parties ? If so, its effect ? OPR.
3. Whether the main election petition has not been properly verified as per the provisions of Section 83 of the Act (*ibid*) ? If so, its effect ? OPR.
4. Whether the main election petition lacks material particulars and concise statement of material particulars as required under Section 83 of the Act (*ibid*) ? If so, its effect ? OPR.
5. Whether the main election petition does not disclose any cause of action or ground for recounting as alleged therein ? OPR.

6. Whether the main election petition is bad for non compliance of the provisions of Sections 81 and 82 of the Act (*ibid*) ? If so, its effect ? OPR.

8. Vide order dated 5-1-1999 issue Nos. 4 and 5 were held against the respondent and the remaining issues were deemed to have not been pressed.

9. On the pleadings of the contesting parties, following issues on merits were framed on 12-3-1999 :

1. Whether the election of respondent No. 1 is liable to be declared void on the allegations made in the petition. If proved, under Section 100 (1)(d) of the Representation of People Act ? OPP.
2. If issue No. 1 is decided in favour of the petitioner, then, whether under Section 101 of the Act, the petitioner is entitled to a declaration that he has been duly elected from 45—Sulah HP Legislative Assembly Constituency ? OPP.
3. Whether irregularities were committed during the counting, as alleged in the Election Petition ? If so, its effect ? OPP.
4. Whether any case is made out for recounting of votes, as alleged ? OPP.
5. Whether valid votes of the petitioner were wrongly rejected and invalid votes were counted in favour of respondent No. 1, as alleged in the Election Petition ? OPP.
6. Relief.
10. Parties led evidence on the above issues.
11. I have heard the learned counsel for the parties and have gone through the records.
12. My findings on the above issues are as under :
Issue Nos. 1, 3, 4 and 5.

13. In view of the frame of issue No. 1 these issues are inseparably inter connected, therefore, are taken up together for decision.

14. The learned counsel for the petitioner, at the very outset of the arguments, very fairly conceded that the casting of votes in the name of dead persons at the time of polling as averred in the petition is not proved for want of evidence, therefore, he had not pressed this ground. He has, however, relied on two broad heads of challenge to the election in question, viz (1) irregularities in counting the votes and (2) non-compliance of the relevant provisions of the Constitution the Act, the Rules and instructions issued by the Election Commission.

Head-1

15. Under this head, the learned counsel for the petitioner relied on the following irregularities allegedly committed in the counting of the votes :

- (a) The counting staff was continuously on duty from 8 A.M. on 2-3-1998 to 11 A.M. on 3-3-1998 with the result that the members of the counting staff were dead tired, sleepy and non attentive and thus not in a position to properly count the votes.
- (b) One Arun Kumar. Patwari, an active convassor and election worker of respondent No. 1 was earlier appointed as counting assistant at table No. 11 for counting of votes polled in the Lok Sabha Constituency was unauthorisedly and deliberately

brought to table No. 1 meant for counting of votes polled in Sulah Legislative Assembly Constituency and said Arun Kumar had put the ballot papers cast in favour of the petitioner in the bundles of votes cast in favour of respondent No. 1.

- (c) On counting table Nos. 1 to 5 substantial number of votes cast in favour of the petitioner had been counted in favour of respondent No. 1, substantial number of votes cast in favour of the petitioner had been rejected and a substantial number of rejected votes had been counted in favour of respondent No. 1. When the petitioner/his counting agents objected to these irregularities, they were asked to keep quiet lest they would be turned out of the counting hall.
- (d) The counting tables were fenced by wire mesh rendering it not possible to the counting agents to properly see the ballot papers and they were not permitted to see the rejected ballot papers when required.
- (e) The decisions about the rejection or acceptance of doubtful votes were taken by the counting staff and not by the Returning Officer, Assistant Returning Officer, without showing the concerned ballot papers to the petitioner or his counting agents.
- (f) The electric light in the counting hall went off twice whereas the light in the adjoining verandah did not go off and there being no sufficient alternative arrangement for light in the hall and the votes meant for the petitioner were pilfered.
- (g) The total votes polled were 30731. When the ballot boxes were opened and ballot papers counted, the total votes polled were found 30721. However, the total votes finally counted were only 30711. It is, thus, evident that ballot papers were pilfered.
- (h) A substantial number of postal ballots was wrongly rejected and substantial number thereof which was liable for rejection and substantial number of such votes which were polled in favour of the petitioner were counted in favour of respondent No. 1.

16. According to the learned counsel for the petitioner, the aforesaid irregularities which were repeatedly objected to and are duly proved have materially effected the election result.

Head-2.

17. Under this head, the learned counsel for the petitioner had relied on the following illegalities allegedly committed by non-compliance of the legal provisions in the process of counting of votes and declaration of election result :—

- (i) The petitioner had made written objection for recounting to the Returning Officer which was rejected by the Observer and thus the Returning Officer failed to discharge his duty of taking a decision on such objections and the Observer intervened and decided the objections without lawful authority.
- (ii) The petitioner was not given any opportunity of being heard before rejecting his said objections and thereby principle of natural justice has been violated.

- (iii) Form 20 (Ex. P 8) has not been prepared as per the Rules inasmuch as it does not give the total of differently categorised votes.
- (iv) The margin of difference of votes secured by the petitioner and respondent No. 1 is less than one per cent, the petitioner had made written objection for recounting of votes which was rejected and that polling at polling booth Nanon where petitioner was to cast his vote was 93.08% which is an unusual feature. As per the instructions of the Election Commission in any of the aforesaid eventualities, the result of the election could not be declared without prior clearance by the Election Commission. However, no such prior clearance was obtained.
- (v) The petitioner in his representation to the Election Commission pointed out the above irregularities and illegalities but never received any reply about the fate of his petition and learnt from other sources that Election Commission had given *ex post facto* permission to declare the result whereas according to the Instructions of the Election Commission, in any of the aforesaid eventualities, the result of the election was bound to be declared null and void.

18. The learned counsel for the petitioner after having read out the evidence, oral as well as documentary, as brought on record had contended that in view of the evidence on record, the irregularities and illegalities as referred to above are fully proved and as a result all these issues may be held in favour of the petitioner. It was further contended that as a consequence, the petition may be allowed by granting the reliefs as prayed for. To substantiate his contentions, the learned counsel has relied on a few cases to which I shall refer at the appropriate stage.

19. On the other hand, the sum and substance of the arguments addressed by the learned counsel for respondent No. 1 is that the allegations made in the petition are unfounded and after thought as is evident from the fact that a cryptic representation for recounting without averring the facts as in the petition was made by the petitioner which was rightly and correctly rejected, and that the alleged irregularities and illegalities are not proved and even otherwise individually or collectively such irregularities do not afford the requisite basis for directing recount of votes in view of the statutory principle that secrecy of voting is to be preserved and cannot be infringed on vague and unsubstantiated allegations without showing that any such irregularity had materially effected the election result. The learned counsel for respondent No. 1 has also relied on a few decisions to substantiate his contentions, reference to which will be made hereafter at the appropriate stage.

20. Before I proceed to examine the evidence and the respective contentions for the parties, it is expedient to refer to the relevant settled position in law regarding the powers of the Court to order inspection and recount of the ballot papers. In *V.S. Achuthanandan vs P. J. Francis and another* (2001) 3 Supreme Court Cases 81], the Hon'ble Supreme Court restated the following guiding principles in this regard :

- (1) The secrecy of the ballot is sacrosanct and shall not be permitted to be violated lightly and merely for asking or on vague and indefinite allegations or averments of general nature. At the same time, purity of election process has to be preserved and therefore, inspection and recount shall be permitted but only on a case being properly made out in that regard.
- (2) A petitioner seeking inspection and recount of ballot papers must contain averments which are adequate, clear and specific making out a case of improper acceptance or rejection of votes or non compliance with statutory provisions in counting.

Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted would not serve the purpose.

- (3) The scheme of the rules prescribed in Part V of the Conduct of Elections Rules, 1961 emphasis the point that the election petitioner who is a defeated candidate has ample opportunity to examine the voting papers before they are counted, and in case the objections raised by him or his election agent have been improperly overuled he know precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this backaround that Section 83(1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts.
- (4) The election petitioner must produce trustworthy material in support of the allegations made for a recount enabling the court to record a satisfaction of a *prima facie* case having been made out for grant of the prayer. The court must come to the conclusion that it was necessary and imperative to grant the prayer for inspection to do full justice between the parties so as to completely and effectually adjudicate upon the dispute.
- (5) The power to direct inspection and recount shall not be exercised by the court to show indulgence to a petitioner who was indulging in a roving enquiry with a view to fish out material for declaring the election to be void.
- (6) By mere production of the sealed boxes of ballot papers or the documents forming part of record of the election proceedings before the court the ballot papers do not become a part of the court record and they are liable to be inspected unless the court is satisfied in accordance with the principles stated hereinabove to direct the inspection and recount.
- (7) In the peculiar facts of a given case the court may exercise its power to permit a sample inspection to lend further assurance to the *prima facie* satisfaction of the court regarding the truth of the allegations made in support of a prayer for recount and not for the purpose of fishing out materials.

21 .It is also pertinent to point out here that after the conclusion of the counting of votes, the petitioner preferred written objections about the counting and asked for recount of the votes *vide* Ex. PW-19/B. Since the contents of written objections Ex. PW-19/B will have relevance and material bearing on appreciation of evidence, therefore, it is desirable to set out the contents thereof at the thresh hold. Ex. PW-19/B which is addressed to the Returning Officer is written in Hindi and English translation thereof reads as follows:—

“It is humbly submitted that while counting of ballots in respect of Sulah Vidhan Sabha Constituency No. 45 was begun at 10.30 P.M. on 2-2-1998, at time of counting, the light had gone off twice in the night and any irregularity or bungling was possible besides, all the employees were regularly deployed for counting since 8 A.M. as a result of which any deficiency in the counting was quite possible.

Hence, it is humbly requested to you that the counting may please be ordered to be re-conducted.”

22. It has to be kept in view that the above written objections were made after the conclusion of the counting and before the declaration of the result of election and as per the contents of Ex. PW-19/B only two objections *viz* (i) electric failure and (ii) deployment of counting

staff continuously were raised and only the possibility of irregularity and bungling was apprehended without any specific instance of any irregularity in the counting having been mentioned therein. Therefore, the petitioner's evidence regarding these grounds of challenge to the election result which relate to the period before the time of presentation of the written objections Ex. PW-19/B will have to be read with great care and caution.

23. Bearing in mind this position and the aforesaid principles, now I proceed to examine the evidence about the aforesaid irregularities and illegalities relied for the petitioner and to record findings thereon.

Head 1 ;

Irregularity (a) :

24. There is no dispute that the same staff was deployed for counting of votes polled in Palampur and Sulah Vidhan Sabha Constituencies. The counting of votes polled in Palampur constituency was started at 8 A.M. on 2-3-1998 and was concluded at 10 A.M. on the same day according to the petitioner, but was concluded at 8.30 P.M. on the same day as per respondent No. 1. However, there is nothing on the record which may lend any corroboration to the statement of the petitioner, whereas according to PW-21 the counting of Palampur Constituency might have concluded at about 8.30 or 9 P.M. According to RW-2, RW-3, RW-4, RW-5 RW-6 and RW-7 all counting agents of respondent No. 1 entered the counting hall at about 9 or 9.30 P.M. when the counting staff was having refreshments. They have not been cross examined on this count. Their entry to the counting hall at about 9 or 9.30 P.M. is suggestive of the fact that the counting of Palampur constituency had concluded by that time. It is also indisputably established from the statements that at the time of their entry the counting staff was having refreshments. This lends corroboration to the version of respondent No. 1 to the extent that counting of Palampur Constituency had concluded before 9 P.M. There is no dispute that counting process of Sulah Constituency started at 10.30 P.M. and ended at about 11 A.M. on 3-3-1998. It cannot be, therefore, said that the counting staff was continuously doing the counting work without any break and refreshments so as to render them prone to commit mistakes in the process of counting. In Ex. PW-19/B, there is no specific allegations that votes were wrongly counted because the staff was tired, sleepy and inattentive but only a possibility of wrong counting of votes was averred. It may also be pointed out that the grounds of challenge that the counting staff being tired, sleepy and inattentive committed mistakes in counting the votes and that the counting staff deliberately carried out the counting to benefit respondent No. 1 (which can be done only by a vigilant and alert person) are mutually destructive and incapable of being believed simultaneously. Therefore, there being no cogent, independent and reliable evidence to prove that the counting staff was tired, sleepy and inattentive and thereby counted the votes wrongly or improperly, it cannot be said that the alleged irregularity had resulted in wrong counting of votes and has materially affected the result of the election.

Irregularity (b)

25. There is no dispute that one Arun Kumar, Patwari was on counting duty on table No. 1. *Vide* order Ex. P-5, he was earlier detailed for duty on table No. 11 in DDA Hall and *vide* order Ex. P-6 one Manohar Lal amongst other, was detailed for duty on table No. 1 in Guitan Hall. *Vide* order Ex. P-4 said Arun Kumar was detailed for counting duty on said table No. 1. All the aforesaid orders had been issued on the same day i. e. 4-2-1998 meaning thereby that these orders had been issued about one month before the date of counting. These orders having been issued by the Returning Officer in the discharge of his official functions carry the presumption that these were issued rightly and properly and similar presumption is attached to the act of bringing about the changes thereby. The petitioner's case, however, is that the changes were brought about deliberately to help respondent No. 1. According to the petitioner, said Arun Kumar was active canvasser and election worker of respondent No. 1. To prove these allegations, the petitioner, in addition to his own statement (PW-19) had relied on the

statements of Santosh Kumar (PW-16), Sher Singh (PW-17) and K.S. Patial (PW-20). PW-16 and PW-17 have stated that Arun Kumar had approached them to vote for respondent No. 1 respectively on 22-2-1998 and 8th and 15th February, 1998. PW-20 has made a general statement that Arun Kumar had been canvassing for respondent No. 1. Whatever PW-19 has stated is on the basis of what he learnt from others. PW-16 is the Pradhan and PW-17 a Panch of the Panchayat. Admittedly, both of them were aware that a Government servant cannot canvass for a candidate in an election. They had admittedly not complained to any authority about the alleged misconduct of Arun Kumar. However, PW-16 admittedly informed the petitioner about it on 23-2-1998 and PW-17 also informed the petitioner about it on 16-2-1998. The petitioner (PW-19) has clearly and unambiguously stated that he was informed by PW-16 and PW-17 before the election that Arun Kumar is a supporter of respondent No. 1. Thus, as per the statements of PW-16, PW-17 and the petitioner himself, he was aware that Arun Kumar was supporter of respondent No. 1 much before the counting of votes. He has further admitted that the order Ex. P-4 whereby Arun Kumar was detailed for counting duty on table No. 1 had been issued on 4-2-1998 and he was aware of detailment of staff for duty. Admittedly, the petitioner did not make any written complaint in this regard to any authority nor objected in writing about detailment of Arun Kumar as counting assistant. Even in his written objection Ex. PW-19/B, the petitioner did not raise the objection in this respect. PW-20 who was an election worker and counting agent of the petitioner had also admitted that he did not make any complaint about the canvassing by Arun Kumar, nor he filed/made any objection in writing or otherwise to any appropriate authority about detailment of Arun Kumar for counting at table No. 1 despite being present and acting as counting agent of the petitioner at the time of counting.

26. As per the contents of paras 11 (iii) and (iv) of the petition at table No. 1, 80 votes meant for petitioner were counted in favour of respondent No. 1, 75 votes in favour of petitioner were declared invalid, 85 invalid votes were counted in favour of respondent No. 1. 30 votes meant for the petitioner were rejected. 20 votes in favour of the petitioner were mixed in the bundle of votes cast in favour of respondent No. 1 and in each round 3 to 6 votes which were liable to be rejected were counted in favour of respondent No. 1. PW-20 who was admittedly the counting agent of the petitioner at table No. 1 has stated that Arun Kumar mixed about 80 ballot papers where by votes were cast in favour of the petitioner with the votes cast in favour of respondent No. 1 and rejected about 70 votes. He has, however, not clarified as to whom these rejected votes were meant for or whether rejection was improper or doubtful. He had not kept any written record of the aforesaid votes. PW-19 has stated that as per the version given to him by PW-20, 80 of his votes were mixed with those of respondent No. 1, 75 votes cast in his favour were declared invalid, 75 invalid votes were counted for respondent No. 1. Evidently, there is marked variance in the statements of PW-20 and the petitioner whereas the source of information of the petitioner is PW-20. Similarly, there is marked variance in the pleading and statements of these witnesses. Thus, the only permissible conclusion is that this irregularity has been pleaded just as an after thought and is an engineered ground. The petitioner has failed to prove this irregularity.

Irregularity (c).

27. The alleged irregularities in counting of votes at table No. 1 have already been held as not proved while recording findings on irregularity No. (b) *supra*.

28. As per the contents of para 11 (v) of the petition, on table No. 2, 15 votes cast in favour of the petitioner were illegally rejected, and 12 votes each cast in favour of the petitioner were counted in favour of respondent No. 1 in counting rounds No. 3 to 5. PW-21, the counting agent of the petitioner at table No. 2 has stated that no irregularity in the first two rounds of counting was committed on this table but in the third round, he noticed twice or thrice that votes cast in favour of the petitioner were mixed with the votes cast in favour of respondent No. 1 and about 15 votes cast in favour of the petitioner were rejected on the ground that these were

identified votes. PW-19 has not stated anything about this irregularity. PW-21 has not supported the version that 12 votes each in round Nos. 4 and 5 were mixed as claimed in the petition. He has also not maintained any contemporaneous notes/record about the figures stated by him.

29. As per contents of para 11 (vi) of the petition on table No. 3 about 10 votes in each round were mixed with the bundles of the respondents and in the 5th round, unascertainable 7 or 8 votes which ought to have been rejected were counted in favour of respondent No. 1 Roshan Pal (PW-22) who was counting agent of the petitioner on table No. 8 has stated that 8 or 10 votes in each round were wrongly counted in favour of respondent No. 1, 8 or 10 votes which were separately kept were mixed with votes polled by respondent No. 1 and these votes were meant to be rejected. He has admittedly not kept any written record of rejected or mixed votes and has made his statement on the basis of idea". Thus, the statement of this witness is not confidence inspiring and trustworthy.

30. As per contents of para 11 (vi) of the petition, on table No. 4, 10 to 12 votes which were liable to be rejected, were counted in each round in favour of respondent No. 1. About 8 votes of the petitioner were mixed with the votes of respondent No. 1 in each round and 8 to 12 votes of the petitioner were improperly rejected in each round. Dina Nath (PW-23) who was the counting agent of the petitioner on this table has stated that 10 or 12 ballot papers bore marks at the back and he objected to counting thereof. The counting staff informed that those ballots would be sent to the Returning officer but he is not aware as to what ultimately happened. Evidently the averments as in the petition are not supported by the witness and are thus not proved.

31. As per contents of para 11 (vii) of the petition on table No. 4, the counting staff put over 25 votes of the petitioner on the votes of respondent No. 1 thereby increasing the number of votes of respondent No. 1. PW-23 the only witness examined to prove it, has not supported this version at all. Thus, the alleged wrong and improper counting on table No. 4 is also not proved.

32. As per contents of para 11 (viii) of the petition, on table No. 5 about 45 votes which were liable to be rejected were accepted in favour of respondent No. 1 in round Nos. 3 to 5. twice the counting staff was asked by the counting agent of the petitioner to show the ballot papers and when shown, 4 ballot papers of the petitioner were found mixed with the votes of respondent No. 1 in round Nos. 4 and 5. 15 votes each meant for the petitioner were wrongly rejected and in each round of counting about 20 votes were wrongly accepted in favour of respondent No. 1 though the ballot papers were having identification marks Ishwar Dass (PW-24) who was the counting agent of the petitioner at table No. 5 has stated that in the first round 20 to 25 ballot papers were found to have double stamps and despite his objection, those were added to the votes polled by respondent No. 1. Evidently, the witness has not supported the version as in the petition regarding wrong and improper counting on table No. 5.

33. It may also be pointed out here that the petitioner (PW-19) has in his cross examination clearly and unambiguously admitted that he had not mentioned these irregularities in his representation/complaint Ex. P-13 made to the Election Commission. There are no specific allegations in this regard in his written objections Ex. PW-19/B. Therefore, these allegations about wrong counting are rendered just an after thought.

34. The burden to prove the allegations of improper acceptance and rejection of the votes wrong counting and mixing of the votes lay heavily on the petitioner who had failed to discharge the burden of proof. On the contrary, the alleged improper acceptance and rejection of votes wrong counting and mixing of votes has been denied by respondent No. 1 (RW-1) and his counting agents RWs. 2 to 7. The respondent No. 1 has further produced in evidence the certificates

about satisfaction of counting signed by the counting agents of the candidates which are Exs. R-1 to R-25 and Ex. PA. As per the contents of these certificates, these purports to have been signed by the counting agents of the candidates after counting of each round in token of being satisfied of the counting of votes in each round of counting. PW-20 has admitted signing of Exs. R-8 to R-12, PW-24 has admitted signing of Exs. R-15 to R-17, RW-2 has also stated that he had signed Exs. R-1 to R-4, in token of satisfaction of counting and that these are signed by the counting agents of the other candidates. Similar are the statements of RW-3, RW-4, RW-5, RW-6 and RW-7 regarding Exs. R-5 to R-25. All these witnesses have categorically stated that these certificates were signed by the counting agents of the candidates in token of their being satisfied of the counting. According to the material witnesses of the petitioner, they had signed these slips in token of bundling etc. and not on being satisfied of the correctness of the counting of votes. Their versions, however, appear to be false. All of them are admittedly literate and are not simpletons. Therefore, it cannot be expected of them to sign these certificates for a purpose other than the purpose for which they are meant.

35. It was contended by the learned counsel for the petitioner that these certificates do not deserve to be taken into account as no legal provision or Rule provides for securing such certificates. Thus the Act of securing these certificates being de hors the Rules and of no use and consequence. Agreed that Rules or orders regulating the process of counting of votes do not provide for obtaining such certificates, however, if the Returning Officer/Assistant Returning Officer had chosen to take this extra precaution, which is not contrary to the letter and spirit of the prescribed procedure and can provide a safeguard against false accusations of improper counting of votes it can certainly be taken into account.

36. In *Ajit Singh Vs. Bansi Singh and others* (AIR 1995 SC 2417) relied by the learned counsel for respondent No. 1, the High Court has read in evidence and taken into account the satisfaction certificates signed by the candidate or his election agent, about the counting of votes alongwith other material to conclude that counting of votes was properly done and dismissed the election petition preferred on the grounds of irregularities in the counting process. In appeal, the Apex Court declined to interfere with the findings and thus by necessary implications approved the extra precaution of taking satisfaction certificates regarding counting of votes from the counting agents/candidates.

37. In *Charan Dass vs. Surinder Kumar and others* [1995 Supp. (3) SCC 318] cited by the learned counsel for respondent No. 1, the Hon'ble Supreme Court *inter alia* relied on the certificates signed by the counting agents in token of satisfactory counting of votes to repel the contention that counting agents were kept away from the counting process.

38. In view of the above, the contention of the learned counsel for the petitioner that satisfaction certificates Exs. R-1 to R-25 and PA cannot be looked into as evidence is not sustainable.

39. The above discussion leads me to the conclusion that the petitioner has failed to prove that in the process of counting, the votes were illegally accepted and rejected and were wrongly counted and mixed as alleged.

Irregularity (d) :

40. There is no dispute that counting tables were protected by placing wire mesh fencing and the counting agents were provided seats beyond the fence. Placing of such fencing to avoid any unpleasant situation cannot be said to be unjustified rendering the counting process invalid. In *Ajit Singh's case supra*, the Hon'ble Supreme Court in this regard has held that such precautionary measures taken by the Returning Officer cannot be held to be unjustified thereby rendering the counting process invalid.

41. It was contended by the learned counsel for the petitioner that because of the fencing the counting agents could not decipher the ballot papers. No such objection was raised by the petitioner in his written objections Ex. PW-19/B. Out of the counting Agents of the petitioner, PW-21 and PW-24 have stated that because of the wire mesh, the ballots could not be properly deciphered. According to PW-22, the counting agents could not properly see the ballot papers unless they would strain a lot. PW-20 and PW-23 have not stated about any difficulty having been created by the fence in seeing/ deciphering the ballot papers. Thus, there being no cogent evidence and the objection in this regard having not been taken in Ex. PW-19-B. this ground also appears to be an after thought. In any case it is not established that wire mesh fencing had in fact led to any irregularity in counting of the votes which would have materially affected the result of the election.

Irregularity (e) :

42. The allegations constituting this irregularity are baseless even in view of the evidence of the petitioner himself. He has stated that alleged irregularities in counting were brought to his notice by his agents during the course of counting itself. After completion of counting he preferred written objections Ex. PW-19/B. There is no allegations that votes were rejected by counting staff and not by the Returning Officer/Assistant Returning Officer and the counting agents/petitioner were not permitted to see the rejected ballot papers. Had such a serious irregularity occurred and was within the knowledge of the petitioner as claimed by him now, in the ordinary course of human conduct, the objection in this regard would have been taken in Ex. PW-19/B. Failure to raise any objection in Ex. PW-19/B render these allegations just an after thought and coined ground to challenge the election. It is admitted case of the petitioner that at the time of counting, he was sitting on the dais with Assistant Returning Officer and others. It is admitted by PW-20 that the rejected ballot papers were given to the supervisor who would write something thereon and then send them to the Assistant Returning Officer. PW-21 has stated that the staff informed about 15 rejected votes and sent them some where but he is not aware as to where those were sent. PW-22 has stated about the ballot papers having marks which were objected to by him. He was admittedly informed by the counting staff that such ballot papers would be sent to the Returning Officer and that those might have been so sent. PW-24 has made the matter clearer by specifically stating that ballot papers having double stamps were taken to the Returning Officer sitting on the dais. It is thus clear that doubtful ballot papers were being sent to the Assistant Returning Officer for decision about rejection and petitioner was admittedly sitting with him. The allegations that the decisions about rejection of votes were taken by the staff and concerned ballot papers were not shown to the counting agents and the petitioner is not substantiated by any cogent and reliable evidence. On the contrary, it is disproved by evidence of the aforesaid witness examined by the petitioner himself.

Irregularity (f) :

43. The case of the petitioner on this count is that during the counting process, electricity went off twice but only in the counting hall and not in the adjoining verandah and during the electricity failure mischief was done, votes of the petitioner were pilfered and "put in the account of respondent No. 1". Primarily this version is a marked improvement on the version in this regard as contained in Ex. PW-19/B wherein the allegation is that at the time of counting the light had gone off twice in the night and any irregularity or bungling was possible. This version in Ex. PW-19/B which is virtually contemporaneous record does not contain the specific allegation that electricity failure was only in the counting hall and not in the verandah and that during such failures, any mischief was done or the votes of the petitioner were pilfered and "put in the account" of respondent No. 1 as is now specifically averred in the petition. This variance by itself render the version in the petition as suspicious being an after thought. Besides, there is no cogent and reliable evidence to prove the alleged pilferage of votes.

44. PW-19 in his examination -in-chief has stated that during counting there was electricity failure in the counting hall but not in the verandah. He has, however, not stated that the alleged mischief pilferage was done at the time of electricity failure. He has further stated that at the time of first electricity failure, a petromax was lit on the table of the Assistant Returning Officer which continued to be there even during the second electricity failure but in its light the counting hall was not properly visible and the light was dim. He could not state about the time of electricity failure. PW-20 who also states about the electricity failure has claimed that at the time of first failure about 20 votes of the petitioner were mixed with the votes of respondent No. 1. He is, however, not sure of the stage of counting at the time of electricity failure. PW-21 has also stated about electricity failure but has not stated about any specific irregularity in counting at the time of such failure. He claims that at that time irregularity could be committed. PW-22 has stated about electricity failures but not about any irregularity or possibility of irregularity in counting the votes at that time. PW-23 and PW-24 have also stated about the electricity failure but not about any irregularity having been committed in the counting of votes at the time of such failure. The evidence of the petitioner on this count is thus inconsistent, unreliable and incapable of proving any irregularity having been committed in the counting of votes during electricity failure.

45. The failure of electricity at the time of counting process is not disputed by the respondent but is admitted. It is, however, claimed that it was just tripping of light and no irregularity in the counting during such tripping was committed. It is also claimed that there was light because of a petromax lamp.

46. In the absence of reliable and cogent evidence, mere failure of light in the counting hall when admittedly alternative light was available, is no reason to presume that irregularity in counting was committed during such failures. This irregularity is also thus not proved.

Irregularity (g) :

47. It is not in dispute that as per the diaries of the Presiding Officers of the concerned polling booths, the total votes polled in the concerned constituency work out to 30731, the total ballot papers found in the ballot boxes when opened for counting were 30721 and the total votes counted in 5 rounds were 30711.

48. The precise contention of the learned counsel for the petitioner, on the strength of the above discrepancies is that wrong counting is writ large and it could be the result of irregularities in the counting. Thus, according to the learned counsel for the petitioner, these discrepancies lend full corroboration to the case of the petitioner that there had been irregularities in the counting process as averred in the petition which have materially affected the election result wherein respondent No. 1 had been declared elected by a narrow margin of 125 votes only.

49. There is no dispute that the petitioner and his counting agents were present throughout the counting process. There is no evidence that at the time of completion of sorting of the ballot papers, the petitioner or his agents pointed out the difference in the number of ballot papers issued and the number of ballot papers found in the ballot boxes and raised any objection in this regard. Similarly, after declaration of the result of the last counting round, no objection was raised about the difference in the number of ballot papers found in the ballot boxes and the number thereof which was counted. The petitioner did file objections Ex. PW-19/B but therein he did not raise any objection in this regard. In fact, the different figures had been worked out by the petitioner from different records after the election result had been declared, to make it a ground of challenge. This discrepancy of total 20 votes can be a result of clerical and/or arithmetical mistake and have no material bearing where difference of votes polled by the petitioner and respondent No. 1 is 125.

50. In *D. P. Sharma vs. The Commissioner and Returning Officer and other* (AIR 1984 SC 654) wherein the total ballot papers which were taken out and counted from the ballot boxes were in excess to the tune of 316 over and above those which were issued and used by the voters while the total number of ballot papers which were found less than those which were issued and used by voters was 20 the Hon'ble Supreme Court held as under:

"... The discrepancy as regards finding of less ballot papers from the ballot boxes than what had been issued and used by the voters is easily understandable for it is quite conceivable that some voters who had got ballot papers issued to them might have walked out of the polling booths without casting them in the ballot boxes and such discrepancy which in the instant case is only to the extent of 20 ballot papers, is not of much significance. It is true that the discrepancy which pertains to finding of excess ballot papers from the ballot boxes over and above those which had been issued and used by the voters would undoubtedly be serious but in the instant case such discrepancy is again in regard to a very small and insignificant number, namely, 316. It may be stated that the total number of votes that had been cast at the election were to the tune of 4,36,536 and compared to the magnitude of votes cast the discrepancy as regards the excess ballot papers found in the ballot boxes is too insignificant and in any case it is nowhere near the margin of 2727 votes by which the respondent No. 12 defeated the appellant. We are of the view that these discrepancies are so insignificant in character that they could be safely attributed to accidental slip or clerical or arithmetical mistakes that must have been committed at the time of counting and preparation of the statement in Forms 16 and 20. In our view, these discrepancies by themselves do not make out a case for directing a recount of votes. It is well established that in order to obtain recount of votes a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by him with some substance that there has been either improper reception of invalid votes in favour of the election candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour of the elected candidate which had in reality been cast in favour of the defeated candidate. Admittedly no such material was placed by the appellant either before the High Court or this Court. In that view of the matter by themselves the discrepancies which have been pointed out by counsel for the appellant in the statements required to be prepared under Rules 45 and 56 do not make out a case for directing a recount of votes."

51. The Hon'ble Supreme Court in *Vadivelu vs. Sundaram & others* (AIR 2000 SC 3230) quoted with approval the ratio of *D. P. Sharma's* case *supra*.

52. In view of the legal position as set out hereinabove, this irregularity though established is not shown to have materially affected the election result.

Irregularity (h) :

53. PW-19 has stated that in all, there were 349 postal ballots out of which 53 were rejected but he was not shown the postal ballots. In the cross examination he has stated that the counting of postal ballots was done on the table of Assistant Returning Officer and he was present there. However, immediately after this admission, he denied his presence at the time of counting at the Assistant Returning Officer's table and claimed that he was walking in the counting hall. This statement of the petitioner is not in conformity with his pleadings *vide* para 11(x) of the petition. His objections Ex. PW-19/B and his representation to the Election Commission do not contain any objection about alleged irregularity in the counting of postal ballots. This irregularity is also thus not proved.

Head-2.

Illegality (I):

54. The contents of written objection Ex. PW-19/B presented by the petitioner has already been set out in para 21 ante of this judgement. It is addressed to the Returning Officer. As per the video cassette Ex. -12 relied by the petitioner himself, he had some discussion with the observer and handed over Ex. PW-19/B to the observer who handed it over to another person. The orders passed on Ex. PW-19/B by the Assistant Returning Officer, Returning Officer and the Observer are respectively Exs. PW-19/B/1, PW-19/B/2 and PW-19/B/3.

55. Order Ex. PW-19/B/1 passed by the Assistant Returning Officer reads as follows .

“With respect to the representation of the candidate, it is submitted that the time, electric supply went off, it was about 10.30-11 p. m. During this period, initially counting was in progress. This process stopped for the period. After restoration of the supply, the process of initial counting resumed, which went upto 3 A. M. I am sure, no irregularity happened during the period of electric failure. Besides, it was not pitch dark. Petromax was lighted up. No objection raised till completion of the counting process. At every round of counting a certificate to the effect that they (counting agents) are fully satisfied with the counting of votes, has also been obtained.

A message was also faxed to the DEO Dharamshala on Fon GE-98 PO 8 F at 1.15 A. M. The objection/representation of the candidate purely appears to be an after thought. There is no merit in the representation of the candidate. Submitted to the R.O. 45 Sulah for n/a please.

Sd/-
A R O.

56. Order Ex. PW-19/B/2 passed by the Returning Officer reads as follows :

“It is submitted that the counting has been done in proper order and to ensure the fairness and impartiality, it was made absolutely clear to the candidates and the Election counting agents that they will raise objection immediately during counting process only, if at all they suspected any problem and if there was none, they were asked to sign a certificate that they are all satisfied with the counting done.

As far as the point regarding failure of electricity supply is concerned, it has been made amply clear by the A.R.O. that light only failed during the initial phase of counting, when the ballot papers were being segregated only.

In the application, the applicant has also made no mention about the rechecking and recounting of the invalid votes. The candidate is neither losing the security deposit on his count is much higher.

Keeping in view the above facts, it is very strongly felt that the recounting is not justified.

Submitted for orders.

Sd/-
RO.

Observer Expenditure
Palampur.”

57. Order Ex. PW-19/B/3 passed by the Observer reads as follows :

I agree.

Sd/-
Observer.

58. As is evident from the contents of these orders that the Assistant Returning Officer, after referring to the factual background, found that the objection/representation Ex. PW-19/B appeared to be an after thought and it had no merit. In fact, these observations are final conclusions on the merits of the petition. The Returning Officer after referring to the merits had concluded that, it was very strongly felt that the recounting was not justified. The Observer had only agreed with what Returning Officer had concluded. *prima facie* the manner in which Ex. PW-19/B has been dealt with is unusual inasmuch as the Returning Officer ought to have passed the final orders on it. Instead the usual method of dealing with an administrative file has been adopted. Nevertheless, the conclusions of the Assistant Returning Officer and Returning Officer that the objection/representation is without merit and recounting is not justified in fact is the end of the matter. Had the orders "I agree" not been passed by the Observer, it would have made no difference and recounting would not have taken place. The submission of Ex. PW-19/B alongwith orders Exs. PW-19/B/1 and PW-19/B/C by the Returning Officer to the Observer is just a superficial act presumably because the objections were presented by the petitioner to the observer and not directly to the Returning Officer. The acts, however, in no case amount to an illegality which may render the election of respondent No. 1 liable to be set aside.

Illegality (ii) :

59. The Assistant Returning Officer and the Returning Officers were the officers in charge of the counting. The facts constituting the basis for apprehension of the petitioner regarding any irregularity or mistake in the counting of votes were such the existence or non existence whereof was within their knowledge. Then before handing over Ex. PW-19/B, the petitioner appears to have made his oral submissions to the Observer in the presence of Assistant Returning Officer who was supervising the counting in the concerned counting hall. In these circumstances and in view of utterly vague allegations in Ex. PW-19/B apparently not disclosing a case for recount for want of allegation of any specific irregularity having been committed in the counting, it cannot be held that the principles of natural justice have been violated in passing the orders on Ex. PW-19/B.

Illegality (iii) :

60. It is not the case of the petitioner that the discrepancy as pointed out in preparing Form 20 has in any manner caused prejudice to him and has any material bearing on the outcome of the election result. At the most, it is a clerical error.

61. In D.P. Sharma's case (*supra*) the Hon'ble Supreme Court while dealing with such situation has held as under :

"It is well established that in order to obtain recount of votes a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by him with some substance that there has been either improper reception of invalid votes in favour of the elected candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour of the elected candidate which had in reality been cast in favour of the defeated candidate. Admittedly, no such material was placed by the appellant either before the High Court or this Court. In that view of the matter by themselves the discrepancies which have been pointed out by the counsel for the appellant in the statements require to be prepared under Rules 45 and 56 do not make out a case for directing a recount of votes."

62. It was further held :

"In any case, as stated earlier, no prejudice is shown to have been caused to the appellant by the discrepancies pointed out in the statutory Forms 16 and 20 ; particularly the

discrepancies in regard to the excess ballot papers found would not have affected or altered the result of the election."

63. In view of the above settled position in law, the discrepancy in preparing Form 20 is of no avail to the petitioner.

Illegality (iv) and (v) :

64. Being interconnected, both these alleged illegalities are taken up together for discussion. There is no dispute that (i) the margin of difference of votes secured by the petitioner and respondent No. 1 is less than 1%, (ii) the polling at the polling booth Nanon was more than 93% and (iii) the petitioner had made written objection Ex. PW-19/B raising apprehensions about correctness of counting of votes which was rejected. The election result was declared without prior clearance from the Election Commission but *ex-post facto* sanction for declaration was accorded by the Election Commission.

65. It was contended by the learned counsel for the petitioner that in any of the aforesaid eventualities the Returning Officer is debarred from declaring the election result without prior clearance by the Election Commission in view of clauses 8 and 9 of the order Ex. PW-19/K and in case the result is declared by the Returning Officer in violation of the said clauses, it would be liable to be declared null and void by the Election Commission. It was further contended that the Election Commission has not acted fairly in granting *ex-post facto* sanction to declare the result as is evident from a perusal of Exs. PW-3/3 and Ex. PW-3/4 which are stated to be the copies of the same Fax/Wireless message from the Election Commission to the Returning Officer but contain cuttings on overwriting of the figures of the material dates besides adding figure '5' to the date of message at two places in Ex. PW-3/3 whereas this figure "5" is not so mentioned in Ex. PW-3/4. Some additions also appear in Ex. PW-3/3 in respect of the address of the addressee and endorsement number whereas these are not in Ex. PW-3/4. It was also pointed out that Fax/Wireless message aforesaid despite dated 4-3-98 was received in the office of the Returning Officer on 19-3-1998 which is yet another circumstance to render the *ex-post facto* sanctions doubtful. These discrepancies are apparent on the face of Exs. PW-3/3 and PW-3/4. However, the fact remains that Election Commission had accorded *ex-post-facto* sanction for declaration of the election result because at the material time, the situation was tense, a fact admitted even by the petitioner. The contentious question thus remains whether *ex-post-facto* sanction was illegally accorded and instead the election would have been declared null and void by the Commission as per its instructions.

66. The latest of the instructions brought on record as amended *vide* Ex. PW-19/J are contained in the compendium Ex. PW-19/K. The relevant clauses of the order dated 9-9-1996 (Ex. PW-19/K) regarding declaration of election result read as follows :

"Declaration of Results :

8. After the counting of votes is complete in all respects the returning officer may declare the result of counting of votes under section 66 of the Representation of People Act, 1951 EXCEPT in following cases :

(i) The margin of votes secured by first two leading candidates is less the 1% of the total valid votes polled by all candidates ;

(ii) The returning officer has set aside any ballot box before Counting of Voting which have been found tampered of in any manner ;

(iii) There are complaints from candidates or their agents about any tampering with seals of ballot boxes ;

(iv) There is a request for recounting which has been rejected ;

(v) Any unusual features found during the counting of votes leading to suspicion of irregularities.

9. In any of the above types of cases, the Commission directs that the result of counting of votes shall not repeat not to be declared with the specific prior written clearance of the Commission."

67. The consequences of violation of the above instructions are provided in clause 13 of Ex. PW-19/K which reads as under :

"13. These instructions are for strict compliance and any deviation from these will be seriously viewed by the Commission and action taken against the erring officers."

68. It is evident from the above that order Exs. PW-19/K does not provide that violation of clauses 8 and 10 will render the election result liable to be declared null and void by the Election Commission.

69. The learned counsel for the petitioner had referred to clause 5 as containing the provisions regarding consequences of violation of the above instructions.

70. Clause 5 of Ex. PW-19/K reads as follows :

"5. In respect of the Assembly Constituencies going to poll on dates preceding last date of poll, prior clearance for counting of votes from the Commission is mandatory. If counting of votes is commenced in any of these assembly constituencies without the specific clearance of the Commission in violation of these Instructions and any result is declared, the Commission will declare such declaration of result as null and void."

71. A bare reading of the above clause makes it clear that it governs a situation different from the situations provided under clause 8 *supra* and will have no application to a case which falls under clause 8.

72. The instructions contained in order Ex. PW-19/H no doubt provide *vide* clause 11 that any violation of the instructions therein will render an election liable to be declared as null and void. Clause 6 of Ex. PW-19/H in its scope embraces the instructions as in clause 8 of Ex. PW-19/K. However, the instructions contained in Ex. PW-19/H stand superseded *vide* order Ex. PW-19/K, therefore, these instructions are no more operative. Thus, as per instructions of the Election Commission as referred to above, the election could not have been declared null and void.

73. Assuming that as per any instruction/order of the Election Commission, it has reserved the powers to declare an election, the result whereof has been declared in violation of clause 8 *supra*, to be null and void, such instructions being violative of the provisions of Section 80 of the Act, are illegal, inoperative and inconsequential.

74. Section 80 of the Act reads as under :

"80. *Election petitions.*—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

75. It is clear from a bare reading of the above provisions that once the result of an election is declared, the Election Commission ceases to have any power to interfere with such

election and the only remedy of an aggrieved party is by filling an election petition in the High Court having the jurisdiction.

76. It may be pointed out that the learned counsel for the petitioner, in support of his contention that the orders/instructions issued by the Election Commission must be followed as they are, had relied on *Chandra Kishore Jha v. Mahavir Prasad and others* [(1999) 8 Supreme Court Cases 266] and *M. Onkar v. Revuri Prakash Reddy and others* [(1999) 4 Supreme Court Cases 508]. However, in the facts and circumstances of this case, the ratio in the above cases do not help the petitioner in any manner.

77. In view of the above discussions, it cannot be held that the Election Commission committed any illegality by not declaring the election null and void for violation of its instructions/orders. The infringement of the instructions as in clause 8 *supra* stood rectified by *ex-post-facto* sanction by the Commission. In any case, the alleged infringement of the instructions is no ground to set aside the election as it has not materially affected the election result in any manner.

78. Lastly it was contended by the learned counsel for the petitioner that the irregularities and illegalities aforesaid may not be individually enough to order recount of the votes, but when taken collectively they do justify recount of the votes.

79. The basic consideration for determination of question whether recount of the votes must be allowed or not is that to maintain secrecy of votes is the mandate of law. Secrecy of votes cannot be permitted to be infringed. Therefore, to be successful in getting a direction for inspection and recount of the votes, the petitioner has to make out a well founded case. He has not only to show that irregularities have been committed in the counting process but has also to establish that such irregularity has materially affected the election result. The allegations of irregularities must be established by contemporaneous, cogent and reliable evidence to satisfy that recount is essential to do justice. In the instant case, the allegations as made in the petition are such that the petitioner could aver them specifically in his written objections Ex. PW-19/B and his representation to the Election Commission Ex. P-13. However, the contents of Ex. PW-19/B primarily do not raise any specific objection about the correctness of the counting of votes but only raises apprehension about possibilities of mischief and irregularity. Secondly, Ex. PW-19/B and Ex. P-13 do not specifically refer even to those irregularities which according to the averments in the petition had been committed before presentation of Exs. PW-19/B and P-13. There is no contemporaneous record of number of votes which are alleged to have been wrongly rejected or accepted or mixed with the votes of respondent No. 1. As already seen, there is no cogent and reliable evidence to establish any such irregularity(s) or illegality(s) which may individually or collectively afford a reasonable and just ground to direct recounting of the votes.

80. In view of the above discussion, it is held that the petitioner has failed to prove these issues which are accordingly decided against the petitioner.

Issue No. 2 :

81. In view of the findings given above, this issue is also held against the petitioner.

Issue No.6 (Relief):

82. In view of the findings recorded on issue Nos. 1 to 5 above, this election petition merits dismissal and is accordingly dismissed with costs quantified at Rs. 10,000/-.

83. The Registrar General shall intimate the substance of the decision hereinabove taken to the Election Commission of India and the Speaker of the Himachal Vidhan Sabha and shall also send authenticated copy of this judgement to the Election Commission of India in accordance with the provisions of Section 103 of the Act forthwith.

September 18, 2001,
PC.
Seal.

Sd/-
M. R. VERMA,
Judge.

